



RED ROBIN INTERNATIONAL, INC.
6312 S. Fiddler's Green Circle #200N
Greenwood Village, CO 80111
303.846.6000

July 29, 2010

Gregory N. Larkin, M.D.
State Health Commissioner
Indiana State Department of Health
2 North Meridian Street
Indianapolis, IN 46204

Subject: Variance Request, Reduced Oxygen Packaging

RECEIVED

AUG 02 2010

FOOD PROTECTION PROGRAM
INDIANA STATE DEPT. OF HEALTH

Dear Dr. Larkin:

Thank you for the Indiana State Department of Health (ISDH) review of Red Robin Gourmet Burgers' variance request, dated August 18, 2009, submitted by Red Robin Gourmet Burgers. I have received the certified letter, dated May 31, 2010, addressed to Eric Marcoux. In review of the May 31, 2010 letter, please accept my apology on behalf of Red Robin Gourmet Burgers for Red Robin not responding to the department's follow-up letter requesting more information, dated February 17, 2010. At this time, I understand that the submitted variance request, dated August 18, 2009, was denied based on several criteria, as outlined in the certified letter, dated May 31, 2010, and at this time, I understand that Red Robin had an opportunity to submit further information by February 17, 2010; however, failed to do so. The lack of response was due to an unfortunate and unforeseen circumstance. Again, please accept Red Robin's sincere apology. Certainly, we would appreciate another opportunity.

Dr. Larkin, please accept for review a new request for variance that includes major procedural revisions to comply with ISDH's Reduced Oxygen Packaging criteria, 410 IAC 7-24-195. In addition, the new request for variance fully addresses the outstanding criteria ISDH outlined from the certified letter, dated May 31, 2010. I am confident that the department will be pleased with the procedural changes made by Red Robin to comply with 410-IAC 7-24-195 and the thoroughness of the revised request for variance.

Food safety and the protection of Red Robin Guests and Team Members are of the utmost importance and priority for Red Robin Gourmet Burgers. Red Robin has well established its restaurants in Indiana and over the many years has worked cooperatively, in partnership, with its respective health departments for the prevention of foodborne illness and for the protection of public health. Red Robin intends, with every effort, to continue the dedication and commitment to food safety and to the health and well-being of Indiana's citizens and visitors.

Attached for ISDH review is the revised request for variance, HACCP plan, and other pertinent information. Should you have any questions, please feel free to contact me directly at 303-846-6069 or at skrull@redrobin.com. Thank you very much for your consideration, patience, and we look forward to an ongoing successful, cooperative partnership in food safety and public health.

Sincerely,

Sharon Krull, MPH
Senior Director of Quality Assurance and Food Safety

C: Loren Robertson, Deputy State Health Commissioner, Indiana State Department of Health
Scott Schooler, VP of Food & Beverage; Eric Marcoux, Sr. Quality Assurance Manager; Dave Powers, Red Robin Gourmet Burgers



Request For Variance

State Form 51184 (12/02)

Food Protection Program

INDIANA STATE DEPARTMENT OF HEALTH

Telephone: 317/233-7360

FAX: 317/233-7334

1. Individual Submitting Request:

Date: 7 / 29 / 2010

Name: Sharon K. Krull, MPH

Telephone: (303) 846-6069

Fax: (303) 846-6044

Mailing Address: 6312 S. Fiddler's Green Circle

Email: skrull@redrobin.com

Denver, CO 80111

P.O. Box

City

State

Zip Code

2. Person/Organization Seeking Variance:

Name: Red Robin Gourmet Burgers

Email: skrull@redrobin.com

Mailing Address: same as above

Number & Street

P.O. Box

City

State

Zip Code

3. Food Establishment(s) for Which Variance is Sought

Include the following information for each food establishment: (List here or attach additional pages if necessary)

- Physical Location (if different than mailing address): Please see attached page for restaurant locations requesting variance
- Mailing Address: please see attached page for all restaurant mailing addresses
(Number, Street, City, State, & Zip Code)
- Telephone Number: () please see attached page Fax Number: () please see attached page
- Person at each retail food establishment most responsible for supervising: General Manager, please see attached page

4. State how the proposal varies from each rule requirement, citing relevant rule sections by number:

(Attach additional pages if necessary)

A variance is required, as specified in 410 IAC 7-24-195, section 195 (a), because the reduced oxygen requirement stated in 410 IAC 7-24-195, section 195 (b) (2) is not met for food products undergoing reduced oxygen packaging. All other sections and subsections under 410 IAC 7-24-195 shall be met and shall be in compliance. See attached document.

5. Explain how the potential public health hazards and/or nuisances will be alternatively addressed by the proposal. Include supporting studies, Hazard Analysis Critical Control Point (HACCP) Plan(s), standard sanitation operating procedures, and/or any other evidence: (Attach additional pages, if necessary.)

Public health and wellness are imperative and treated with the utmost importance and priority. Potential public health threats and food safety hazards shall be fully addressed in the variance request proposal. Supporting documentation for the protection of food safety and public health shall be included in the proposal, as well as a HACCP plan, Standard Operating Procedures (SOPs), extensive training that outlines all pertinent information for the successful execution of reduced oxygen packaging for the service of safe, wholesome food products.

6. List how the proposal demonstrates the following (if applicable to the request):

A) How the proposal differs from what is common and usual in similar industry situations:

The proposal differs from commonplace in that with most applications of reduced oxygen packaging the food industry or food professional loses control of the product prior to food consumption by the end user and that there are not several crucial critical control steps aligned from production or preparation to direct consumption of the food by the end user. What differs from 410 IAC 7-24-195 and industry's approach to reduced oxygen packaging is that Red Robin's proposal:

- 1) Incorporates a cook-chill process where food is cooked to a minimum of 165 degrees F.
- 2) Executes a "hot-fill process" directly into the bag prior to sealing
- 3) Cools foods quickly to 41 degrees F with six hours and to 34 degrees F with 48 hours.
- 4) Controls the potential for microbiological growth by freezing food product to 10 degrees F or less instead of cold holding food product in refrigerated storage at 41 degrees ;
- 5) Minimizes the shelf life to 9 days after packaging compared to the allowable 14 days after packaging; and in addition,
- 6) Maintain in complete control of the food and process from receiving through end user consumption.

B) How the proposal is unique and not addressed in existing rules or law:

The proposal is unique in that it provides alternate, viable CCPs as barriers to Clostridium botulinum that are scientifically sound, as attached supporting evidence concludes, that go beyond Indiana's current food rules or laws. The proposal has stricter CCPs, controls than current 410 IAC.

C) How the proposal does not diminish the protection of public health:

The proposal does not diminish the protection of public health because critical control points (CCPs) are in place for food safety and public health. In combination with CCPs, execution of Standard Operating Procedures (SOPs), informative and well executed Team Member training programs, Team Member accountability, and strict Team Member adherence to Red Robin food safety protocols and Food Code regulation, the protection of public health shall not be diminished.

D) How the proposal is based on new scientific or technological principle(s):

The proposal is based off the 2009 FDA Food Code.

E) How the implementation of the variance would be practical:

The implementation of the variance is not only practical, but has been proven practical for five years and going. The first variance required of Red Robin for reduced oxygen packaging was in 2005 by Maricopa County in Phoenix, AZ. To date, Maricopa County has a very similar code and regulation (1999 FDA Food Code) as 410 IAC 7-24-195. Since the first variance requirement in 2005, Red Robin has proven the variance's practicality and successful implementation in other states, such as New York and Virginia.

7. Explain how the person/organization seeking the variance will assure that all provisions of a granted variance will be enacted at each food establishment for which a variance has been granted:

The design of the HACCP plan, Standard Operating Procedures, continual team member training, and close monitoring along with verification shall assure that all provisions of a granted variance shall be enacted at each Red Robin restaurant. These plans and procedures incorporate extensive monitoring, ongoing and timely documentation, corrective actions, recordkeeping, and verification, which all shall be evaluated internally by restaurant management, and externally by third party certified auditors, and Red Robin Corporate Senior Management.

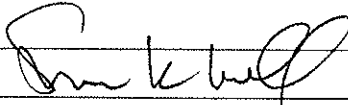
8. List all affected parties known by the person/organization seeking a variance, including all affected regulatory authorities: (Attach additional pages if necessary)

Red Robin restaurants, Indiana State Department of Health, local health departments to include: Hamilton County, Vanderburgh County, Allen County, Lake County, St. Joseph County, Hendricks County, and Porter County

9. Attach copies of any related variances, waivers or opinions issued by other governmental agencies.

For Office Use Only

10. Signature of Individual Making Request:



Printed Name, Title: Sharon K. Krull, MPH, Senior Director of Quality Assurance and Food Safety